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EXAMINER

COOLEY, CHARLES E

ART UNIT PAPER NUMBER

1723

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/731,980

Applicant(s)

HOLCOMB ET AL.

Examiner

Charles E. Cooley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 25-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 15-24 is/are rejected.
- 7) ☒ Claim(s) 7-14 is/are objected to.
- 8) ☒ Claim(s) 1-30 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 04072004; 04082005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

NON-FINAL OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

2. As the PTO continues to move towards a fully electronic environment, the office will phase-in its E-Patent Reference program. This program: (1) provides downloading capability of the U.S. patents and U.S. patent application publications cited in Office actions via the E-Patent Reference feature of the Office's PAIR system; and (2) ceases mailing paper copies of U.S. patents and U.S. patent application publications with office actions except for citations made during the international stage of an international application under PCT.

Effective June 2004, paper copies of cited U.S. patents and U.S. patent application publications will cease to be mailed to applicants with Office actions from this Technology Center. Paper copies of foreign patents and non-patent literature will continue to be included with office actions.

The U.S. patents and patent application publications cited in office actions are available for download via the Office's PAIR system. As an alternate source, all U.S.

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patents and patent application publications are available on the USPTO web site (www.uspto.gov), from the Office of Public Records and from commercial sources.

Inquiries about the use of the Office's PAIR system should be referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.

Requests to restart a period for response due to a missing U.S. patent or patent application publications will not be granted.

Election/Restriction Requirement

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-24, drawn to a whisk, classified in class 366, subclass 129.
- II. Claims 25-30, drawn to a method of assembling a whisk, classified in class 29, subclass 527.1.

4. The inventions are distinct, each from the other because of the following reasons:

5. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make other and materially different product such as a whisk lacking a cable or resilient coupling.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and the

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search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

7. This application contains claims directed to the following patentably distinct species of the claimed invention: **Species A: Figures 1-9 and Species B: Figure 10.**

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 15, 18, and 21-24 are considered generic to both species.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35

U.S.C. 103(a) of the other invention.

8. During a telephone conversation with Kevin Costanza on 1 SEP 2005 a provisional election was made without traverse to prosecute the invention of Group I and Species A, apparatus claims 1-24. Affirmation of this election must be made by applicant in replying to this Office action. Method claims 25-30 are thereby withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement

10. Note the attached PTO-1449 form(s) submitted with the Information Disclosure Statement filed 7 APR 2004 and 8 APR 2005.

Drawings

11. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference

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characters mentioned in the specification are included in the appropriate drawing

Figure(s) as required by 37 CFR 1.84(p)(5).

INFORMATION ON HOW TO EFFECT DRAWING CHANGES, IF NEEDED

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Specification

12. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

13. The use of the trademarks have been noted in this application. They should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

14. The abstract is acceptable.

15. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (MPEP 606.01). The title should delete the reference to nonelected method.

Claim Objections

16. Claims 1, 4, 17, and 21 are objected to because:

- a. Claim 1, line 2: it appears "wires" should be --wire--.
- b. Claim 4 contains trademarks (see MPEP 2173.05(u)) below).
- c. Claim 17 should depend from claim 16 since "the cable" lacks antecedent basis.
- d. Claim 21 contains trademarks (see MPEP 2173.05(u)) below).

MPEP 2173.05(u) Trademarks or Trade Names in a Claim

The presence of a trademark or trade name in a claim is not, per se, improper under 35 U.S.C. 112, second paragraph, but the claim should be carefully analyzed to determine how the mark or name is used in the claim. It is important to recognize that a trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. See definitions of trademark and trade name in MPEP § 608.01(v). A list of some trademarks is found in Appendix I. If the trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of the 35 U.S.C. 112, second paragraph. *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. In fact, the value of a trademark would be lost to the extent that it became descriptive of a product, rather than used as an identification of a source or origin of a product. Thus, the use of a trademark or trade name in a claim to identify or describe a material or product would not only render a claim indefinite, but would also constitute an improper use of the trademark or trade name.

If a trademark or trade name appears in a claim and is not intended as a limitation in the claim, the question of why it is in the claim should be addressed. Does its presence in the claim cause confusion as to the scope of the claim? If so, the claim should be rejected under 35 U.S.C. 112, second paragraph.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

18. Claims 15, 18, and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Schub (US 6,764,704).

The patent to Schub discloses in Fig. 4 a whisk head 34; a handle 22; a resilient coupling 122 between the whisk head 34 and the handle 22; the whisk head 34 retained by the coupling 122 and capable of permanent connection thereto.

19. Claims 15, 16, 18, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Mattar (US 5,676,464).

The patent to Mattar discloses in Figs. 1-2 4 a whisk head 28; a handle 22; a resilient coupling 26 or 30 between the whisk head 28 and the handle 22; the whisk head 28 retained by the coupling 26 or 30 and capable of permanent connection thereto; and a cable 32 between the handle 22 and the coupling 26 or 30.

20. Claims 15, 18, 19, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Maslow (US 2,208,337).

The patent to Maslow discloses in the Figures a whisk head 1; a handle 2; a resilient coupling 3 between the whisk head 1 and the handle 2; the whisk head 1 retained by the coupling 3 and capable of permanent connection thereto; and a core 5.

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21. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 8709442 U1.

DE 8709442 U1 discloses in the Figures a whisk head 2 having a plurality of wires 1; a handle 9 of some inherent flexibility having a cover formed about a core 10; a coupling 5 having a cable 13 with capturing means 19; the wires 1 being looped.

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

24. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mattar (US 5,676,464) in view of Kesilman et al. (US 3,412,983).

Mattar does not disclose the cable being formed of stainless steel. Kesilman et al. (US 3,412,983) discloses a whisk and teaches that elements of the whisk can be formed of stainless steel. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have formed any of the elements of the whisk of Mattar from stainless steel, including the cable, as suggested by Kesilman et al. (US 3,412,983) for the purpose of imparting rust resistance to whisk and its ability to sustain contact with hot water for cleaning purposes without damage (col. 4, lines 16-20).

Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Additionally, in view of the fact that the use of stainless steel vis-à-vis any other common construction material solves no stated problem insofar as the record is concerned and the conclusion of obviousness can be made from the common knowledge and common sense of one of ordinary skill in the art (*In re Bozek*, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969)), it would have been obvious to one of ordinary skill in the art to have formed any of the components of the prior art whisk from a well-known construction material such as stainless steel. *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

It is observed that artisans must be presumed to know something about the art apart from what the references disclose (see *In re Jacoby*, 309 F.2d 513, 135 USPQ

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317 (CCPA 1962)). Moreover, skill is presumed on the part of those practicing in the art. See *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985). Therefore, it is concluded that the selection of a well-known material in the art such as stainless steel would have been obvious to one of ordinary skill in this art, if for no other reason than to achieve the advantage of using a more modern material or a lower cost or more easily fabricated material or to employ a material with particular desired properties such as resistance to corrosion and durability.

25. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maslow (US 2,208,337) in view of FR 2458262.

Maslow does not disclose the recited core. FR 2458262 discloses a whisk having a handle G; a coupling C, GF, K; and a whisk head A. A core R is embedded in the handle G to reinforce the attachment of the handle to the coupling. The core is formed of a molded plastic material that fills the inner region of the handle and around the ends of the whisk wires (per the abstract and see the Figure). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the handle of Maslow with a core formed of plastic material as disclosed by FR 2458262 for the purposes of securing the ends of the whisk wires in the handle and to seal the handle against fluids to prevent contamination of the whisk.

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26. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schub (US 6,764,704), Mattar (US 5,676,464), or Maslow (US 2,208,337) in view of Butte (US 5,688,045).

Schub (US 6,764,704), Mattar (US 5,676,464), or Maslow (US 2,208,337) do not disclose the recited handle material. Butte discloses a whisk having a handle 1 formed with an over-molded plastic material 6. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the handles of Schub (US 6,764,704), Mattar (US 5,676,464), or Maslow (US 2,208,337) with an over-molded plastic material as disclosed by Butte for the purposes of providing an impermeable seal against liquids and to facilitate cleaning of the whisk (col. 2, lines 52-55; col. 3, lines 22-28 and lines 60-67; col. 4, lines 12-21).

27. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schub (US 6,764,704), Mattar (US 5,676,464), or Maslow (US 2,208,337) in view of Bendickson et al. (US 4,825,552).

Schub (US 6,764,704), Mattar (US 5,676,464), or Maslow (US 2,208,337) do not disclose the recited durometer range of the handle. Bendickson et al. discloses a culinary hand-held implement having a working end 11 and a handle 12. The handle is formed from an elastomeric material having a durometer range of 50 to 60. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the handles of Schub (US 6,764,704), Mattar (US 5,676,464), or Maslow (US 2,208,337) such that they fall within the recited range for the

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purposes of providing the proper degree of flexibility to the handle without losing flexibility and a comfortable feel or rendering the implement difficult to control (col. 3, line 64 - col. 4, line 7).

28. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 8709442 U1 in view of Steiner et al. (US 6,273,602).

DE 8709442 U1 does not disclose the wires being covered with a flexible material or the handle being formed of an elastomer. The patent to Steiner et al. discloses an assembly of a handle and wires wherein the wires are readily and firmly attached to the handle. Also, the assembly is easily accomplished, and the whisk can even be disassembled to remove the wires for replacement, if and when desired. The entire whisk is coated with an elastomer, such as silicone, to render the whisk resistible to foreign matter and to avoid scratching in the use of the whisk and to render it liquid-proof and easily cleanable. The whisk of this invention provides for the positioning of the wires for their usual looping and overlapping positioning, and to do so with a structure and method which are an improvement and reliable and simplified.

A whisk handle 10 has a plurality of wires 11 attached thereto to extend in the shown loops. The handle 10 is elongated in its shape, and it presents a longitudinal axis 12. The handle 10 has a bulbous shape, as shown, to be ergonomically configured to accommodate a user's gripping hand, and it is generally cylindrical throughout its length along its axis 12.

FIG. 4 shows that one end 13 of the handle 10 has an opening 14 into which a weight 16 is snugly disposed to give a controllable weighted characteristic to the whisk. The handle end 13 is thusly completely enclosed and devoid of any access into the handle 10.

The handle has another end 17, which is an upper end, and it has a cavity 18 defined by a tapered wall 19. The cavity 18 is initially open to the exterior of the handle 10 and it terminates at a shoulder 21 on the handle 10. The cavity 18 also has a base wall 22 at the interior of the handle 10. The tapered wall 19 is frusto-conical in its shape in the side view, as shown, and it is narrowest toward the interior of the handle 10, that is, at the base 22.

A plurality of equally circumferentially spaced-apart grooves 23 extend along the tapered wall 19 at the tapered orientation as that of the wall 19 and from the shoulder 21 and to their respective bases 24. Every two of the grooves 23 that are diametrically disposed across the cavity 18 form a pair, and the pairs have their every two bases 24 at the same longitudinal extent along the handle 10.

The respective pairs of grooves 23 all extend longitudinally on the handle and along the wall 19 to extents which differ from all other pairs of grooves. Also, all the grooves 23 arcuately extend in substantially a semi-circular cross-section into the wall 19 and at the same arcuate depth. The arcuate depth of each of the grooves 23 is slightly less than the size of the semi-circular cross-section of each wire 11 on the plane transverse to the handle axis 12. The cross-sectional depth of all grooves is the same.

The wires 11 have a circular cross section of uniform size throughout the entire lengths of all wires. The wires all have planar and completely straight ends 26 and 27 where the respective wires are disposed in the respective pairs of grooves 23. Before assembly, the wires are coated throughout their lengths from end to end with an elastomer, such as silicone, and the heretofore mentioned size of the wires includes the silicone coating shown at 35.

FIG. 1 shows the wires 11 extend from the handle 10 in loops 28. The pairs of the depths of the grooves along the handle length are arranged so that the loops overlap each other because of the varying extents of pairs of the grooves and all the wires are of the same overall end-to-end length.

FIG. 5-9 show an insert 29 which is of a frusto-conical shape between parallel end surfaces 31 and 32. The conical shape and size are the same as that of a portion of the length of the cavity 18, and the insert 29 is disposed in the cavity 18 and presents a conical wall 36 disposed at the angulation of the wall 19. The insert 29 has an axial length less than that of the cavity 18, and thus the insert walls 31 and 32 are spaced from the handle cavity walls 21 and 22 in the final assembled condition shown in FIG. 5.

The insert 29 has grooves 34 equally spaced therearound and arranged to match the grooves 23 in length and cross-sectional size. The grooves 34 are arcuate in cross-section, and are formed in the tapered wall 36 on the exterior of the insert 29. Thus, the tapered walls 19 and 36 are parallel to each other. The arcuate depth of the grooves 34 is less than a semi-circular shape and is of the same arcuate shape and depth as that of the grooves 23.

With both grooves 23 and 34 aligned with each other in pairs, each pair receives a respective wire 11, as shown in FIG. 5. The entire lengths of the wires 11 have fully encasing and resilient silicone coatings, as shown at 35. In the final assembly, as shown, the diameter of the wire 11 with its coating 35 is slightly greater than the slightly incomplete diameter formed by each pair of the grooves 23 and 34. FIG. 5 therefore shows that the walls 19 and 36 are spaced apart. The entire insert 29 is completely spaced from the handle 10. That results in the insert 29 radially forcing on the wires 11 to clamp the wires 11 between the handle 10 and the insert 29, with the wires 11 being in the respective pairs of grooves 23 and 34.

However, the insert 29 does not bottom out on the handle base 22, so the insert 29 can be moved axially of the handle to fully force against the silicone elastomer on the wires 11 and thereby firmly hold the wires 11 to the handle 10. That force is in the direction transverse to the handle longitudinal axis 12.

A screw 37 extends through an axial passageway 38 in the insert 29 and threads into an opening 39 in the handle 10. The screw 37 has a head 41 and a shoulder 42 which bears onto a shoulder 43 on the insert 29. A usual screwdriver slot 44 is on the head 41 and it faces to the exterior of the handle, namely, toward the extending wire loops 28. An unshown screwdriver bit, of any conventional form, can be inserted between the wire portions 28 and onto the screw 41 for tightening, and loosening, the screw 41, as desired. The insert 29 is forced axially of the handle 10 and is self-adjusting in exerting equal force on the wire ends, such as ends 26 and 27. The force is

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substantially radial relative to the handle axis 12, and, by virtue of the application of the screw 37, the insert 29 is forced into the taper 19 of the handle 10.

In making the assembly, the ends of the wires 11 can be placed into the handle grooves 23 and the insert 29 can be passed between the wire portions 28 and placed into the cavity 18 and tightened by the placed screw 41. Alternatively, the insert 29 can be placed into the cavity 18 and the two ends of each of the wires 11 can be inserted into the respective pairs of grooves 23 and 34 and then the screw 41 can be tightened to clamp the wires, all performed with only the upper end 17 of the handle being arranged to present access to the handle interior while the handle lower end 13 can remain fully encased, as mentioned.

Upon completion of that assembly and tightening, the handle has an elastomer coating, such as silicone, including the juncture at 46, to render the assembly liquid proof and to even further support the wires 11 relative to the handle 10, and silicone 47 is shown encasing the handle 10.

In a sequence of assembly events, the handle 10 is molded with its cavity 18 and the weight 16 disposed therein. The handle can be covered with liquid silicone, except, at this time at the cavity 18, by an injection molding process. The handle will be attached to a core for molding, and the core will be suspended in the entire cavity 18 so the silicone can coat the entire remainder of the handle 10. Long lengths of wire, which is of a spring steel which retains its shape once it is bent, have the silicone 35 bonded thereto by first applying a bonding agent and then extruding the silicone 35 around the wire and then curing the silicone. The wire is then cut into pluralities of the one length to

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present the wires 11. The wires 11 can be bent into the shape they have in the final assembly, as shown. After assembly of the wires 11 with the handle 10, room temperature potting silicone, such as at 46, can be injected around the wires 11 and thereby provide a seal around the wires 11 and with the handle 10 and prevent the accumulation of bacteria at that location.

The silicone 35 on the wires 11 provides for a resilience on the wires in the clamping of the wires by the two tapered members. The grooves 23 and 34 are each less than a semi-circle, so they do not abut each other in the tightening of the insert 29 onto the wires 11. Also, the wire ends are straight and do not require any bending thereon in order to be clamped, and the wires 11 are clamped for the entire length of the insert 29 and thereby provide for stability of the wires 11.

FIG. 10 shows the relationship of the less than semi-circular shape of the grooves 23 and 34, and they are shown compared to the circumference of the coated wire straight end 26. With that arrangement, a gap 48 exists between the tapered walls 19 and 36, so full radial force can be applied onto the wires 11. Also, the insert holes 38 and 49 permit the shank of the screw 37 and screw head 41 to be spaced away from the insert 29 for radial self-positioning of the insert 29, and thereby apply a force only radially relative to the axis 12 as the force is applied to the wires ends 26 and 27 thus assure securement of the coated wires 11.

Accordingly, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have covered the wires with a flexible material and to form the handle of an elastomer in the whisk of DE 8709442 U1 as

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taught by Steiner et al. for the purposes of rendering the whisk resistible to foreign matter and to avoid scratching in the use of the whisk and to render it liquid-proof and easily cleanable (col. 1, lines 33-37).

29. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 8709442 U1 in view of FR 2458262.

DE 8709442 U1 does not disclose the recited core. FR 2458262 discloses a whisk having a handle G; a coupling C, GF, K; and a whisk head A. A core R is embedded in the handle G to reinforce the attachment of the handle to the coupling. The core is formed of a molded plastic material that fills the inner region of the handle and around the ends of the whisk wires (per the abstract and see the Figure). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the handle of DE 8709442 U1 with a core formed of plastic material as disclosed by FR 2458262 for the purposes of securing the ends of the whisk wires in the handle and to seal the handle against fluids to prevent contamination of the whisk.

30. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 8709442 U1 in view of Kesilman et al. (US 3,412,983).

DE 8709442 U1 does not disclose the cable being formed of stainless steel. Kesilman et al. (US 3,412,983) discloses a whisk and teaches that elements of the whisk can be formed of stainless steel. It would have been obvious to one having

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ordinary skill in the art, at the time applicant's invention was made, to have formed any of the elements of the whisk of DE 8709442 U1 from stainless steel, including the cable, as suggested by Kesilman et al. (US 3,412,983) for the purpose of imparting rust resistance to whisk and its ability to sustain contact with hot water for cleaning purposes without damage (col. 4, lines 16-20).

Allowable Subject Matter

31. Claims 7-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

32. The following is an Examiner's statement of reasons for the indication of allowable subject matter:

The prior art of record does not teach or fairly suggest the recited details of the cable or the collar around the coupling.

Conclusion

33. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses whisks showing the couplings between the whisk head and the handle.

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571)

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272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

35. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, appearing to read "Charles", followed by a long, wavy horizontal line.

Charles E. Cooley
Primary Examiner
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2 September 2005